

was not the result of circumstances beyond the employee's control; or

(4) The employee mistakenly registered for unemployment benefits when he or she should have applied for sickness benefits for the day or days claimed and the appropriate statement of sickness was then received at an office of the Board within a reasonable time after unemployment benefits were denied; or

(5) Notwithstanding the foregoing, any claim that is not filed within two years of the day or days claimed shall not be considered as timely filed, and such day or days shall not be considered as days of sickness.

(e) *Days for which no statement of sickness deemed filed.* A statement of sickness shall not be deemed to be filed with respect to any day in a benefit year in which the employee is not a qualified employee as defined in section 3 of the Railroad Unemployment Insurance Act or has exhausted his or her rights to sickness benefits under the Act. See part 336 of this chapter.

[54 FR 43057, Oct. 20, 1989, as amended at 57 FR 807, Jan. 9, 1992; 60 FR 40073, Aug. 7, 1995]

#### § 335.5 Death of employee.

If an employee dies before filing one or more of the required forms, the form or forms may be filed by or in behalf of the person or persons to whom benefits would be payable pursuant to section 2(g) of the Railroad Unemployment Insurance Act. Such form or forms shall be filed within the time prescribed in § 335.4 of this part. Under these circumstances, the word "employee" as used in § 335.4(b) of this part and as used in § 335.4(d)(3) of this part shall include the individual or individuals by or in behalf of whom the form is filed. The order of distribution for benefits due but unpaid as of the date of an employee's death is the same as the order of distribution for annuities unpaid at death under the Railroad Retirement Act and may be found at § 234.31 of this title.

#### § 335.6 Payment of sickness benefits.

(a) *Waiting period.* A qualified employee's first registration period in any benefit year is his or her waiting period, provided that such employee has at least five days of sickness in such

registration period, four of which must be consecutive, and files a timely claim for sickness benefits for such period. No benefits are payable for any day of sickness in such registration period.

(b) *Subsequent registration period.* With respect to any subsequent registration period in the same benefit year and the same period of continuing sickness, the Board will pay benefits for each day of sickness in excess of four during such registration period.

(c)(1) *Example 1.* An employee has a period of continuing sickness running from May 1 through May 31. All of those days are days of sickness. The employee returned to work June 1. His first registration period in that period of continuing sickness is May 1 to May 14. That registration period, if it is the employee's first one in the benefit year, is a waiting period, and no benefits are payable for any day of sickness therein. The employee's second registration period is May 15 to May 28, and benefits will be paid for each day of sickness in excess of four during such period. The employee's third registration period is May 29 to June 11, but since he or she returned to work on June 1 the employee has only three days of sickness (May 29, 30 and 31), and hence no sickness benefits are payable for that period.

(2) *Example 2.* An employee has a period of continuing sickness beginning on May 1 and ending on July 31, with all days in the period being days of sickness. The employee's first registration period in the period of sickness is May 1 to May 14. Because that registration period is the employee's first one in the benefit year, the period is the employee's waiting period and no benefits are payable for any of the days therein. Benefits are payable for each day in excess of four during each of the employee's next four registration periods of May 15 to May 28, May 29 to June 11, June 12 to June 25, and June 26 to July 9. July 10 is the beginning date of a new benefit year for the employee. Because the registration period July 10 to July 23 is the employee's first one in the new benefit year, the period is the employee's waiting period and no benefits are payable for any of the days of sickness in the period. The employee's second registration period in the new

benefit year is July 24 to August 6. The employee has eight days of sickness in that period, having been found able to return to work as of August 1. Benefits are payable for four days of sickness in that period.

(d) The gross amount of sickness benefits for any registration period in a benefit year, following the waiting period for such year, shall be computed by multiplying the number of days of sickness in excess of four by the employee's daily benefit rate, as computed under part 330 of this chapter. From such gross amount the Board will deduct the amount of any social insurance payment apportionable to days of sickness in the registration period, any tier I railroad retirement employment tax imposed under chapter 22 of the Internal Revenue Code of 1986, and the amount of any overpayment being recovered under part 340 of this chapter. The net amount remaining shall then be certified to the United States Treasury Department for payment to the employee, unless a portion of such amount has been attached in accordance with part 350 of this chapter.

(e) Sickness benefits shall continue to be certified for payment pursuant to the foregoing paragraphs for the duration of the employee's period of continuing sickness, subject to the statutory maximums prescribed in section 2(c) of the Railroad Unemployment Insurance Act. See also part 336 of this chapter.

## **PART 336—DURATION OF NORMAL AND EXTENDED BENEFITS**

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AUTHORITY: 45 U.S.C. 362(l).

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## **Subpart A—Normal Benefits**

### **§ 336.1 Introduction.**

(a) *General.* This subpart explains how long a qualified employee may receive normal unemployment or sickness benefits under the Railroad Unemployment Insurance Act during a benefit year. Under section 2(c) of that Act, normal unemployment benefits are payable for up to 130 days of unemployment within a benefit year, or in an amount equal to the amount of the employee's "base year compensation", whichever is less. A similar limitation applies to the payment of sickness benefits. An employee who exhausts his or her normal unemployment or sickness benefits may be eligible for payment of extended unemployment or extended sickness benefits under the conditions set forth in subpart B of this part.

(b) *Definitions.* The terms "benefit year", "base year", and "compensation" are defined in part 302 of this chapter. The term "registration period" is defined in parts 325 and 335 of this chapter. For the purposes of this subpart, and as explained in § 336.4 of this part, an employee's "base year compensation" may include compensation in excess of the monthly compensation base (as defined in part 302 of this chapter) even though such excess may not be counted for the purpose of determining whether such employee is a "qualified employee" within the meaning of part 302.

(c) *Recovery of benefits.* When unemployment or sickness benefits are recovered by the Board for one or more days, the Board will disregard those days in determining whether the employee has exhausted normal unemployment or sickness benefits with respect to the applicable benefit year.

### **§ 336.2 Duration of normal unemployment benefits.**

(a) *130 compensable day limitation.* A qualified employee who has satisfied the waiting period for a benefit year may receive benefits for a maximum of